NO. 4204

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

EMERY VALENTINE, for himself and all other taxpayers of the City of Juneau, Alaska,

Appellant,

vs.

R. E. ROBERTSON, B. M. BEHRENDS, as Treasurer of the City of Juneau, and the CITY OF JUNEAU, ALASKA,

Appellees.

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA, DIVISION NUMBER ONE.

BRIEF OF THE APPELLEES

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STATEMENT OF THE CASE.

Inasmuch as the case is here on plaintiff's demurrer to the further answer and new matter affirmatively pleaded in defendants' answer, the facts are brief and will be found in that pleading.

AMENDED COMPLAINT.

The amended complaint which sought to restrain defendants from expending municipal funds alleged that plaintiff is a taxpayer of the defendant municipality. Plaintiff denominated the capacity in which he brought suit as "Emery Valentine, for himself and all other taxpayers of the City of Juneau, Alaska" (P. R. p. 1), and alleged that he and all other taxpayers would receive and suffer irreparable injury and loss and damage by defendants' alleged acts, unless the latter were restrained, and that they were without other remedy (P. R. p. 6) but there was no allegation that he brought the suit except on his own behalf.

ANSWER.

To the amended complaint, the defendants filed an answer, which, after generally denying the allegations of the amended complaint, alleged by way of new matter and an affirmative defense: the municipal existence of Juneau, the election and qualification of its mayor and six councilmen; and "that the defendant R. E. Robertson is the acting city attorney" for said municipality (P. R. pp. 24, 25); the position of the city as a commercial center through which business is carried on with outlying towns and camps; the building of a wharf by the city, as it was authorized to do, and the expenditure of a large amount of money equipping said wharf for conducting the wharfage business; the increase of said business by the improvement of and aids

to navigation (P. R. p. 25); the ownership by the city of all streets within the municipality and its duty to keep them in repair (P. R. p. 25), "that for a long time past the city of Juneau has built its streets out of 3-inch planking; that it has become impracticable, owing to the large number of automobiles in use in said city and to the rise of labor and material, to continue the method heretofore employed in building and improving streets, that permanent streets now have to be built necessitating the expenditure of a large amount of money, which the city of Juneau is unable to do unless it is authorized and empowered to issue bonds for said purpose; that it is necessary among other things, before it can issue said bonds, to have an act of Congress authorizing the issuance of said bonds, that a bill has been prepared and introduced into the Congress of the United States by the Delegate from Alaska, which bill, if it becomes a law, will give the City of Juneau said authority; that it is necessary, in order to secure the passage of said bill, to have a person who is conversant with the facts appear before the committees of Congress to explain the facts to said committees and work in conjunction with the Delegate from Alaska to secure the passage of said bill authorizing said issuance of bonds." (P. R. pp. 25, 26); that the citizens of Juneau and of Southeastern Alaska, generally, had been advocating, prior to January 18, 1924, the sending of persons to Washington, D. C., to advocate certain legislation in con-

nection with certain projects, an enumeration of which is contained in the resolution passed by the Juneau municipal council on January 18, 1924; that the defendant Robertson, who was well qualified and in possession of the necessary facts to represent said citizens in Washington, D. C., had been chosen by some of the citizens as one of the persons to make said trip (P. R. p. 26), that the defendant municipality was interested in many of said projects and that the consummation of many of them would be of great benefit to said municipality generally, and particularly in connection with its ownership of its wharf and facilities, and that the municipal council, considering said benefits, endorsed said various projects (P. R. pp. 26, 27); that the defendant Robertson consented to act for the defendant municipality in connection with the passage of the bill allowing said municipality to issue bonds for street improvement and to use his best endeavors before the Congressional committees by explaining the facts to them and the needs of the municipality in that connection if the municipality would pay said Robertson's expenses in going to Washington (P. R. p. 27), that on January 18, 1924, the defendant municipality's common council passed a resolution (P. R. pp. 30-38) setting forth the attitude of the city in regard to said several projects and appropriating $2,000.00, or so much thereof as was necessary, to defray said Robertson's expenses to Washington and return, in representing said municipality in

connection with the bill authorizing the municipality to issue bonds for street improvement purposes (P. R. pp. 27, 28), that the defendant municipality derives its revenue (a) from real and personal property taxation, (b) from revenue and profit made by its city dock and facilities, (c) from license taxes imposed by it, (d) from police fines imposed by it, and (e) from license taxes collected by the Federal Government from businesses conducted within the municipality, that the monies in the city treasury were derived from said sources, and that the appropriation and payment of the monies under said resolution were out of the monies in the municipal treasury derived from said various sources, which monies had not theretofore been appropriated or set aside for any purpose whatsoever, and that said appropriation and payment would not necessitate said municipality's levying a special tax or increase the tax levy for the current year (P. R. p. 28), that on January 19, 1924, pursuant to said resolution, the mayor of the defendant municipality duly and regularly issued a warrant in favor of the defendant Robertson in the sum of $1,500.00, which warrant was countersigned by the city clerk; that on January 21, 1924, the City Treasurer, the defendant Behrends, paid said defendant Robertson said $1,500.00 (P. R. pp. 28, 29).

DEMURRER.

To defendants' further and affirmative answer, plaintiff filed his demurrer upon the ground that

the same does not state facts sufficient to constitute any defense or counterclaim to plaintiff's amended complaint. (P. R. p. 38).

A hearing was had upon plaintiff's demurrer, which the Court overruled by its order of February 9, 1924 (P. R. pp. 39, 40), rendering and filing on the same date its written opinion (P. R. pp. 41-56.)

PLAINTIFF'S REFUSAL TO PLEAD OVER.

Thereupon, in open Court, plaintiff announced that he stood upon his demurrer and would not reply or plead over (P. R. p. 57, Appellant's Bf. p. 12), whereupon the Court entered its judgment and decree vacating the temporary restraining orders and injunctions and that the plaintiff take nothing by his action. (P. R. pp. 57, 58.)

As is disclosed in the trial court's opinion (P. R. p. 43), the demurrer filed to the amended complaint was also overruled, but no appeal was taken therefrom.

RESOLUTION OF JANUARY 18, 1924.

Before discussing the law applicable to the case, we wish to stress the fact that in our opinion neither the allegations of the amended complaint nor the fact as to whether or not they have been met by the answer are material at this time. We also contend that it is immaterial as to what record was originally, or in the first place, made of the proceedings of the

Common Council and of its resolution of January 18, 1924, because the Common Council itself found (P. R. p. 32) that the record first made of those proceedings was indefinite, inaccurate, uncertain, omitted an important part, and failed to clearly state the proceedings. The correct record of the proceedings of January 18, 1924, appears in the record made on January 29, 1924. This seems clear to us from Exhibit "A" (P. R. pp. 32-38), but in view of appellant's analysis of that resolution (Appellant Bf. pp. 9-12, 21-25), we feel it proper to distinctly differentiate (a) the resolution as passed from (b) the record made of that resolution. Our contention under the admitted facts is that the correct record of the actual resolution is found in Exhibit "A," commencing with the tenth line P. R. p. 32, and continuing through to page 38, and that the incorrect record of the resolution is found in Exhibit "A," commencing with the twenty-first line, P. R. p. 30, and continuing down and to the third line P. R. p. 32. This incorrect record of the resolution is quoted by appellant in his brief page 22. With this explanation, we earnestly submit that there was only one resolution, viz., the resolution of January 18, 1924, but that that resolution was recorded in the minutes of the City Council twice, namely: once incorrectly on January 18, 1924, and later, correctly, on January 29, 1924. We specifically challenge the statement (Appellant's Bf. p. 5) that the answer generally admitted the substantial allegations of the com-

plaint, and that the answer (Appellant's Bf. p. 6) does not deny paragraphs 9 and 10 of the amended complaint, and that the defendant's affirmative defense simply restates and affirms the allegations of the amended complaint but in different language.

ARGUMENT.

At the outset it is perhaps proper, in view of the wide departure by appellant in his brief from that course, to point out that the channel in which are to be found the facts before the Court consists of the further answer and new matter, which the defendants affirmatively set up in their answer under Sec. 895, Compiled Laws of Alaska 1913, which provides:

> "Sec. 895. The answer of the defendant shall contain—
>
> "First: A general or specific denial of each material allegation of the complanit controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief.
>
> "Second: A statement of any new matter constituting a defense or counterclaim in ordinary and concise language without repetition."

To that further answer and affirmative matter (P. R. pp. 38, 39), appellant demurred under Sec. 900, C. L. A. 1913, which provides:

> "Sec. 900. The plaintiff may demur to an answer containing new matter when it appears upon the face thereof that such new matter does not constitute a defense or counterclaim, or he may, for like cause, demur to

one or more of such defenses or counterclaims and reply to the residue."

The plaintiff thus admitted the facts, so far as well pleaded, in the further answer and new matter of the defendants' answer, but said that they were not legally sufficient to constitute a defense.

31 CYC. 269, 270.

Plaintiff's contention then must be confined to the facts alleged in defendants' further answer and new matter. His position necessarily is that he admits those facts are true but contends that they are not legally sufficient to authorize the expenditure of municipal funds for the purposes and in the manner as alleged, not in the amended complaint, but in such further answer.

The first question then is "Did the defendant municipality have the power to authorize the appropriation and expenditure of money in the manner alleged in defendants' further answer and for the purpose of sending to Washington, D. C., its attorney to explain to the committees of Congress the necessity of the municipality's being permitted to issue bonds for the purpose of raising the funds necessary to enable it to build necessary permanent streets?"

That perhaps would be the only question had not the appellant injected into the controversy on appeal the allegations of his amended complaint. By reason thereof, the second question arises, "Can the plaintiff maintain this action?"

UPON THE DEFENDANT MUNICIPALITY IS IMPOSED THE DUTY TO LOCATE, CONSTRUCT AND MAINTAIN STREETS, TO KEEP THEM IN REPAIR AND, WHEN NECESSARY, TO BUILD PERMANENT STREETS.

Appellant's demurrer to defendants' further answer and new matter admitted that the defendant municipality built a city wharf and spent a large amount of money equipping said wharf with facilities for conducting said wharfage business (P. R. p. 25), and that the revenue and profit made by said dock and facilities is one source of the municipality's revenues as well as of the moneys from which was made the appropriation whereof plaintiff complains (P. R. p. 28). This, we respectfully submit, is tantamount to an admission that the defendant municipality owns and operates a municipal dock or wharf with facilities for the wharfage business. In the allegation "that the improvement of and aids to navigation greatly increased the business done by the city or its said wharf" (P. R. p. 25), is also found a tacit admission of the benefits to the defendant mnuicipality of the several improvements of and aids to navigation in territorial waters which were endorsed as appears by the Common Council's resolution (P. R. pp. 30-38), while in the allegation "that the consummation of many of said projects would be of great benefit to the City of Juneau, generally, and particularly in connection with the city's own-

ership of its wharf and facilities" (P. R. p. 26), is an express admission of those benefits as well as of said ownership.

Plaintiff has also admitted the defendant municipality's ownership of the streets, the reasons and the necessity for the improvement of the streets and for the building of permanent streets and that such street work will necessitate the expenditure of a large amount of money (P. R. p. 25).

The two allegations that the city was authorized to build its said city wharf and that it is the city's duty to keep said streets in repair (P. R. p. 25) are in consonance with the third paragraph of Sec. 12, Art. III, Ch. 97, Alaska Session Laws 1923, which reads as follows, viz.:

> "Sec. 12. General Authority of Council. The council shall have and exercise the following powers:
>
> * * * * * *
>
> "Third: To provide for the location, construction and maintenance of the necessary streets, alleys, crossings, sidewalks, sewers, wharves, aqueducts, dikes and water courses and to widen, straighten, strengthen or change the channels for streams and water courses."

Surely the appellant will not gainsay that this statute not only authorizes the defendant municipality to own, build and maintain its wharf or dock but also imposes upon it the duty to keep its streets in at least a reasonable state of repair as well as authorizing it to construct and maintain permanent streets.

Appellant's rather sharp, indeed almost disparaging, criticism of the opinion of the learned trial judge, we submit is not justified by the record herein; in fact, analysis discloses that appellant's criticism of that portion of the opinion (P. R. p. 49), quoted by appellant in his brief (Appellant's Bf. bottom p. 16, top p. 17), is based entirely upon the omission of the word "acting" before the words "City Attorney" and the inclusion therein of the clause "and as such acts in a legal advisory capacity to the City Council." Against the remainder of this quoted excerpt from the opinion, which as disclosed by the opinion itself (P. R. p. 49) is a "boiled down" restatement of the previous substantial statement (P. R. p. 48), the appellant can have no grievance unless it be because, in his brevity, the trial court omitted a condensed statement of the allegation (P. R. p. 26), appearing in defendant's further answer "that it is necessary, in order to secure the passage of said bill, to have a person conversant with the facts appear before the committees of Congress, etc." Even the omission of the word "acting," assuming but not conceding that the learned trial court, as intimated by appellant, intentionally omitted it, could not, were it material, injure appellant as only on the preceding page of the opinion (P. R. p. 48) the court in making a statement, which he denominated as "in substance" used the exact language of the defendants' pleading, i. e.: "Robertson is the acting city attorney" (P. R. p. 25; Op., P. R. p. 48). This stricture

upon the trial court's having thereby, as appellant claims, misstated the facts (Appellant's Bf. p. 17), seems to be entirely hypercritical. But appellant is not content therewith. The Court is subpected to further criticism for the use of the clause "and as such acts in a legal advisory capacity to the City Council." There can be no contravention of the admission that the defendant "Robertson is the acting city attorney" (P. R. p. 25), hence, under the statute, Sec. 23, Ch. 97, Alaska Session Laws 1923, quoted by appellant (Appellant's Bf. p. 45), he was the legal advisor of the Council and other officers of the city, or, in the language of the trial court, "and as such acts in a legal advisory capacity to the city." We submit that the admitted fact that the defendant Robertson "is the acting city attorney" includes the deduction that he acts in a legal advisory capacity to the City Council. Upon such hypercriticism, appellant boldly asserts that the lower court went outside the record, and that he, appellant, shall also do so, and he thereupon does do (Appellant's Bf. p. 18.) Later (Appellant's Bf. p. 26) he again does so, and states "There are a great many persons in Juneau who disagree with that statement of the matter, and the record does not justify the conclusion." The cause of this assertion of appellant's is found in the Court's statement that Robertson "is not seeking to influence Congress for the private benefit of any person or class of persons." (P. R. p. 51). The Court made that statement to disclose some of the

features in which the instance case could be distinguished from the void agreement spoken of in the case of *Trist v. Child*, 21 Wall. 441, 445, and at the same time to show that this case was within the sanction of the language of the U. S. Supreme Court in that case. We are content to challenge the production of anything in the record upon which a finding can be based or a deduction reached that the defendant Robertson "was seeking to influence Congress for the private benefit of any person or class of persons, or that he was to represent anyone whosoever for any purpose whatsoever other than the defendant municipality for public municipal purposes."

From his brief (Appellant's Bf. pp. 19 to 25) we gather that appellant contends that the resolution of the Common Council, exhibit "A" (P. R. pp. 30 to 38), discloses that the defendants were dominated by some sinister or ulterior object. We regret that we are unable to see the basis of such deduction by appellant, but we confidently urge that that exhibit shows clearly that only one resolution was passed by the Common Council, i. e., on January 18, 1924, and that the meeting of January 29, 1924, was simply to correct the record of that resolution. It seems to us that our contention is substantiated by the exhibit itself, i.e.: "And whereas said resolutions as placed upon the minutes are indefinite, inaccurate, uncertain, omit an important part, and fail to correctly state the proceedings of the common council, it is moved by

Councilman Connors that the resolutions be corrected to read as follows." (P. R. p. 32). If the defendant thought the evidence would disclose the contrary he would not have admitted by his demurrer the allegation in defendants' further answer, viz.: "That on the 18th day of January, 1924, the Common Council of the City of Juneau, Alaska, passed a resolution * * * *, a copy of which resolution is attached hereto, marked Exhibit 'A,' and made a part hereof," (P. R. pp. 27, 28). Surely if such contention were seriously considered by him, appellant would have challenged such allegation by pleading over instead of standing upon his demurrer.

To fix upon the defendant Robertson's duties or employment the odious cloak of lobbyist, thus to insure the defendants' acts to fall with the censure of public policy, appellant needs must resort to his own pleading, i. e.: amended complaint (P. R. pp. 19, 20), whereas the facts, from which the nature of those duties or employment must necessarily, we submit, be drawn, are to be found in the admitted allegations of defendants' further answer and new matter. It is not our understanding that appellant, conceiving that the facts admitted by his demurrer are too prejudicial to him, can now at this late hour assert that the defendants have admitted the allegations of his amended complaint. The further answer and new matter clearly disclose that no one contemplated that the defendant Robertson was to use personal solicitations or to

exercise or attempt to exercise personal influence or improper or corrupt methods either in Congress or with any member of Congress. On the contrary the admitted facts are that "It is necessary, in order to secure the passage of" the bill, by which the defendant municipality could issue bonds so as to raise the necessary funds for the required permanent streets, "to have a person who is conversant with the facts appear before the committees of Congress to explain the facts to said committees and work in conjunction with the delegate from Alaska to secure the passage of said bill authorizing said issuance of bonds," (P. R. p. 26), and that the said defendant "Robertson consented to act for the City of Juneau in connection with the passage of the bill allowing the City of Juneau to issue bonds for street improvement and to use his best endeavors before the committees of Congress by explaining the facts to them and the needs of the City of Juneau in this connection" (P. R. p. 27). The record also admittedly discloses that the defendant Robertson was in no wise to profit by the services that he was to render but that he was to render those services "If the City of Juneau would appropriate sufficient money to pay his expenses in going to Washington," (P. R. p. 27).

Other pertinent admitted facts are: That the defendant municipality derives its revenues from five different sources, viz.:

> Taxation of real and personal property;
>
> Revenues and profits made by its municipal wharf and facilities;
>
> License taxes imposed by it;
>
> Police fines imposed by it;
>
> License taxes imposed and collected by the Federal Government from businesses conducted within the municipality.

And that the money used in payment of the defendant Robertson's expenses to Washington was derived not alone from real and personal property taxes but from these various sources, that this money had not heretofore been appropriated or set aside for any purpose, and that the appropriation and expenditure of the money would not necessitate a special tax or increase the tax levy for the current year. All these facts are clearly alleged in defendants' further answer and new matter. (P. R. p. 28).

In addition to the unequivocal admission of these facts there are several statutory provisions which may be aptly considered with them. The law is specific that the defendant municipality must obtain Congressional authorization before it can bond itself, i.e.:

> "* * * * * nor shall the territory, or any municipal corporation therein, have power or authority to create or assume any bonded indebtedness whatever, nor to borrow money in the name of the territory or of any municipal division thereof; * * * * *."

Sec. 9, Act. Aug. 24, 1912, 37 Stat. L. 512, Sec. 416, C.L.A. 1913.

The Territorial Legislature has also prohibited the municipality from issuing bonds, i.e.:

"Sec. 13. The City Council shall have no authority to issue bonds or incur any bonded indebtedness, nor shall they have authority to incur a greater indebtedness or liability, etc."

Art. III, Ch. 97, Alaska Session Laws 1923.

Inasmuch as we have seen that the City Council has authority to provide for the location, construction and maintenance of wharves (Sec. 12, Subpar. 3, Art. III, Alaska Session Laws 1923, supra), we believe there will be no contradiction that it has a right to make a revenue and profit therefrom. This assumption is further supported by the 4th subparagraph, Sec. 12, Art. II, A.S.L. 1912, which authorizes the city to maintain public utilities.

The City Council is authorized to levy and collect a poll tax (Subp. 7, id.), to levy a dog tax (Subp. 8, id.), to impose license taxes on auctioneers, itinerant vendors, etc. (Subp. 14, id.), through which another one of the sources of revenue is accounted for.

The imposition and collection of police fines is authorized by Subp. 12, id.; thus accounting for one more of the sources of revenue.

The other source of revenue, occupational licenses collected by the Federal Government, is

derived by reason of the payment under Sec. 630, C.L.A. 1913, 30 Stat. L. p. 1336, 32 Stat. L. 946, of the licenses on businesses within the municipality under Sec. 2569, C.L.A. 1913, 31 Stat. L. 331, and Sec. 259, C.L.A. 1913, 34 Stat. L., 478.

These statutes show that the defendant municipality may legally derive revenue from the several sources of municipal revenue admitted by the record.

SERVICES IN EXPLAINING TO CONGRESSIONAL COMMITTEES THE NECESSITY OF A MUNICIPALITY'S ISSUING BONDS SO AS TO ENABLE IT TO RAISE FUNDS WITH WHICH TO BUILD NECESSARY PERMANENT STREETS ARE NOT LOBBYING SERVICES, AND AN AGREEMENT FOR THE PERFORMANCE THEREOF IS NOT VOID AS AGAINST PUBLIC POLICY.

Appellant's argument is based upon the assumption that the agreement between the defendant municipality and the defendant Robertson is a lobbying contract, and he states that "it is the contract we are criticising and not Mr. Robertson," (Appellant's Bf. p. 27). His fears apparently arise not out of what the defendant Robertson may do but out of what he claims that defendant is clearly permitted to do. He is afraid that some vicious precedent will be established which may be taken advantage of in the future by an avowed lobbyist. To us, his fears seem groundless not only in mind

but also in the record, as by his standing on his demurrer he has admitted that all that the defendant Robertson is to do "is to act for the City of Juneau in connection with the passage of the bill allowing the said City of Juneau to issue bonds for street improvement and to use his best endeavors before the committes of Congress by explaining the facts to them and the needs of the City of Juneau in this connection," (P. R. p. 27). Turning back, we find that it is also admitted "that it is necessary, in order to secure the passage of said bill, to have a person who is conversant with the facts appear before the committees of Congress to explain the facts to said committees and work in conjunction with the Delegate from Alaska to secure the passage of said bill authorizing said issuance of bonds," (P. R. p. 26).

True, indeed, the defendant Robertson might have undertaken to so act for the defendant municipality, yet upon his arrival in Washington he might have committed a murder or a burglary with the ill conceived idea of thereby in some way of securing the passage of a street bonding bill for the City of Juneau. But, the record shows no premise from which to deduce such fact, nor does the record afford any foundation for the theory that he intended to use personal solicitations, or to exercise personal influence or improper or corrupt methods, for the purpose of securing the passage of the bill. If appellant deemed that the defendant Robertson did not intend to abide by the

agreement with the municipality or intended to exceed his authority or that there was a secret understanding by which he was to do some of the things which make a lobbying contact void as against public policy, then we again submit that appellant instead of standing on the record and admitting that none of those things were intended to be done by any of the defendants, should have denied defendants' further answer and new matter.

Those things however are part of the essentials of a lobbyist.

> "To 'lobby' is for a person not belonging to the Legislature to address or solicit members of a legislative body, in the lobby or elsewhere, *away from the house*, with a view of influencing their votes. Webst. Dic."
>
> *Chippewa V. & S. R. Co. v. C. St. P. M. & O. R. Co.* 75 Wis. 224, 44 N.W. 17, 6 L.R.A. 601 at 609.

The Courts have even given a more limited definition than the one just quoted, viz.:

> "Lobbying services are generally defined to mean the use of personal solicitations, the exercise of personal influences and improper or corrupt methods, whereby legislative or official action is to be the product. A contract for such services is void, and cannot be enforced. *Dunham vs. Hastings Pavement Co.* 56 App. Div. 244, 67 N. Y. Supp. 632-634; *Trist v. Child*, 88 U. S. (21 Wall.) 441-448, 22 L. ed. 623, *Oscagan vs. Arms Co.* 103 U. S. 261, 22 L. ed. 539."
>
> *Burke v. Wood*, 162 Fed. 533, 537, 541.

In the case of *Chippewa Valley & S. R. Co. v.*

Chicago, St. P., M. & O. R. Co. supra, the Wisconsin Supreme Court quite fully reviewed the cases relative to contracts which had been condemned as being void and against public policy. An examination of the cases reviewed by that Court reveals that nearly all of those cases, in fact, we believe it can be safely asserted, all of them, show that the agent was to receive compensation for his services. In many of those cases, the compensation was even contingent upon success. That Court stated that:

> "Where the principal object and purpose of an agreement is to secure, by a promise of compensation contingent upon success, influence upon or with members of a Legislature, or executive or other public official, it is none the less vicious in its tendencies because it is therein stipulated that such influence shall be 'reasonable and proper.' The precise point is that such agreement, for such purchase of influence, is against public policy, and therefore improper.
>
> "There is another consideration which has generally made courts more emphatic in condemnation of such contracts, and that is that the agreement for compensation is made contingent upon the success of the legislation or other object sought."

6 L. R. A., 608, 609.

But that Court did not change its prior concession that an agreement for compensation for certain services in securing the passage of an act, as, for instance, making a public argument before a committee at the Legislature, or before the Leg-

islature itself, if permitted to do so, might be enforced. See Page 607, id.

While it has often been decided that an agreement for the sale of influence and exertions of a lobby agent to bring about the passage of a law, without reference to its merits, for a consideration, is void against public policy, yet, those cases by no means hold that no person can appear either by himself or by his counsel and lay a lawful matter before a Legislature.

In summing up the previous cases on this question, the U. S. Supreme Court in *Marshal v. B. & O. R. Co.*, 57 U. S. 314, 16 How. 314, 14 L. ed. 953, at 963, said:

> "The sum of these cases is, 1st. That all contracts for a contingent compensation for obtaining legislation, or to use personal or any secret or sinister influence on legislators, is void by the policy of the law.
>
> "2d. Secrecy, as to the character under which the agent or solicitor acts, tends to deception, and is immoral and fraudulent, and where the agent contracts to use secret influences, or voluntarily, without contract with his principal, uses such means, he cannot have the assistance of a court to recover compensation.
>
> "3d. That what, in the technical vocabulary of politicians is termed 'log-rolling,' is a misdemeanor at common law, punishable by indictment."

But that Court in the same decision at page 962, id., also painstakingly pointed out that:

> "All persons whose interests may in any way be affected by any public or private act of the Legislature, have an undoubted right to urge their claims and arguments, either in person or by counsel professing to act for them, before legislative committees, as well as in courts of justice. But where persons act as counsel or agents, or in any representative capacity, it is due to those before whom they plead or solicit, that they should honestly appear in their true characters, so that their arguments and representations, open and candidly made, may receive their just weight and consideration. A hired advocate or agent, assuming to act in a different character, is practicing deceit on the Legislature. Advice or information flowing from the unbiased judgment of disinterested persons, will naturally be received with more confidence and less scrupuluosly examined than where the recommendations are known to be the result of pecuniary interest, or the arguments prompted and pressed by hope of a large contingent reward, and the agent 'stimulated to active partisanship by the strong lure of high profit.' Any attempts to deceive persons intrusted with the high functions of legislation, by secret combinations, or to create or bring into operation undue influence of any kind, have all the injurious effects of a direct fraud on the public."

Not only in the case just referred to but in the subsequent case of *The Providence Tool Co. v. Norris*, the compensation of the lobbyist was contingent upon success. In the latter case, the U. S. Supreme Court specifically said:

> "Agreements for compensation contingent upon success, suggests the use of sinister and corrupt means for the accomplishment of the end desired. The law meets the suggestion

of evil, and strikes down the contract from its inception."

69 U. S. 45, 2 Wall. 45, 17 L. ed. 868 at 871.

Again, in the case of *Trist v. Child*, wherein the compensation was contingent upon success, the Supreme Court specifically announced that certain services, i.e.: the identical kind of services which the record discloses, we submit, were to be performed by the defendant Robertson, are entirely legal:

"We entertain no doubt that in such cases, as under all other circumstances, an agreement express or implied for purely professional services is valid. Within this category are included: drafting the petition to set forth the claim, facts, preparing arugments, and submitting them orally or in writing, to a committee or other proper authority, and other services of like character. All these things are intended to reach only the reason of those sought to be influenced. They rest on the same principle of ethics as professional services rendered in a court of justice, and are no more exceptionable."

Trist v. Child, 88 U. S. 441, 21 Wall. 441, 22 L. ed. 623 at 624.

The Court also stated at pp. 624, 625, id., that such services were to be distinguished from personal solicitation, viz.:

"But such services are separated by a broad line of demarcation from personal solicitation, and the other means and appliances which the correspondence shows were resorted to in this case. There is no reason to believe

> that they involved anything corrupt or different from what is usually practiced by all paid lobbyists in the prosecution of their business."
>
> 624, 625, id.

The trial Court cited *Trist v. Child, supra*, as clearly showing the validity of the employment in the case at bar. We challenge the appellant to point out a single fact that brings the case at bar within the condemnatory language of the Supreme Court in that case wherein it said:

> "The agreement in the present case was for the sale of the influence and exertions of the lobby agent to bring about the passage of a law for the payment of a private claim, without reference to its merits, by means which, if not corrupt, were illegitimate and, considered in connection with the pecuniary interest of the agent at stake, contrary to the plainest principles of public policy." 625, id.

Admittedly, the defendant Robertson was in no wise to benefit by the success or lack of success that crowned his efforts. He consented to act for the City of Juneau "if the City of Juneau would appropriate sufficient money to pay his expenses in going to Washington and return." (P. R. p. 27.) He, clearly, was not to receive any compensation in the ordinary sense of that word. He had no pecuniary interest at stake. He was not seeking to assist the passage of any bill for the benefit of any private person. The agreement was in no wise contingent upon success. He was to receive no pay for his services, and the U. S. Supreme Court has said, not, as inadvertently misquoted by the

appellant in his brief, on page 31, that "the taint lies in the stipulation," but:

> "The taint lies in the stipulation for pay." *Trist v. Child*, 22 L. ed. 625.

The principle, that a contract for services either to cause or prevent legislative action when such services consist of publicly presenting the subject before the Legislature or some of its committes, is not void as against public policy, is clearly announced in the foregoing cases as well as in the cases of:

> *Sweeney v. M'Leod*, 15 P. (Ore.) 275, 279.
> *Powers v. Skinner*, 34 Vt. 274.

Sufficiently has it been shown that this case does not properly present any question of contemplated lobbying services and that the cases which most strongly condemn contracts for services of a lobbyist emphatically distinguish such contracts from those where the services to be performed are of the nature contemplated by the defendants.

The Common Council, as seen, has specific authority to locate, construct and maintain the necessary streets, alleys, crossings, sidewalks, sewers, wharves, etc. (Subp. 3. Sec. 12, Art. 3, Chap. 97, Alaska Session Laws 1923, supra.) It is also admitted that permanent streets are necessary, but that they can not be built unless the city issues bonds to raise the money and that it is necessary, before issuing the bonds, to have Congressional authorization therefor, and that such authorization

can not be procured without having a person conversant with the facts appear before the Congressional committees, explain the facts to them and work in conjunction with the Delegate from Alaska. (P. R. pp. 25, 26.)

These allegations, to disgress for a moment, we submit, plainly evidence not that the defendant municipality was seeking in any wise to usurp the powers of the Delegate from Alaska, but was only seeking to work in conjunction with him. It can be conjectured that the Territorial Delegate, regardless of his representation of the entire Territory, might not be conversant with the facts as to the necessity of permanent streets for the defendant municipality and that he might be very willing to have the assistance of the municipality's representative in securing requisite legislation therefor. But to revert to the admitted facts and law—from them it not illogically follows that the Common Council had authority to incur such expenses as it might deem necessary to enable it to perform its duty relative to streets and wharves. That defendant Robertson is admitted to be the acting city attorney is perhaps of no particular importance. No doubt the Common Council could have acted, if it had seen fit, through any other agent or representative. There is no foundation for appellant's deduction that the money was appropriated for the other projects set forth in Exhibit "A." Those projects were simply endorsed by the Common Council. That body thereby stated

that in its judgment all those projects were beneficial to the defendant municipality. Certainly none of them are of a political nature except the project for dividing the Territory of Alaska, unless it can be said that any project requiring Congressional authority is of a political nature. In one respect that is, of course, true, but we submit that the defendant municipality's desire to construct permanent streets, coupled with its inability to finance such a proposition except by an issue of bonds for which it must first receive the authority of Congress, does not make a proposal to construct permanent streets into a political proposition. All of the projects mentioned can just as well be conjectured to be of benefit to the municipality as of detriment to it. They might well increase the revenues and profits of the municipality's wharf which it is authorized to operate. The municipality could legally have a keen interest is such projects, both from the standpoint of proprietorship and from that of a municipal sovereign. Indeed, it is admitted that the consummation of these projects would be of great benefit to the defendant municipality. (P. R. pp. 26, 27.)

THE MUNICIPALITY OF JUNEAU, ALASKA, HAS AUTHORITY TO APPROPRIATE AND EXPEND MONEY OUT OF ITS TREASURY FOR THE PAYMENT OF THE EXPENSES OF ITS ATTORNEY IN MAKING A TRIP TO WASHINGTON, D. C., TO EXPLAIN

TO CONGRESSIONAL COMMITTEES THE NECESSITY OF THAT MUNICIPALITY'S BEING PERMITTED TO ISSUE BONDS WITH WHICH TO RAISE FUNDS NECESSARY TO ENABLE IT, IN THE PERFORMANCE OF ITS DUTY, TO BUILD NECESSARY PERMANENT STREETS.

The learned trial Court's opinion is so clear that we think there is little need to attempt to throw further light upon the question. As in the ably and logically decided case of *Meehan, et al. v. Parsons, et al.*, 271 Ill. 546, 111 N.E. 529, extensively quoted by the trial Court, so in this case there is nothing to warrant the deduction that the defendant Robertson was to receive any compensation contingent upon the obtaining of the desired legislation. On the contrary, it is definitely and clearly conceded that he was to receive only his expenses in going to and from Washington. There is nothing to evidence that he had any personal interest in the outcome of his efforts, or that he personally would be either benefitted or damaged by any possible Congressional action.

Also, as in the Iowa case of *Dennison v. Crawford Co.*, there is nothing herein which tends to show that the defendant Robertson used or intended to use any means except such as were calculated to appeal to the reason and judgment of the Congressional committees as a body. This case, indeed, is stronger than the Iowa case as the facts

here specifically show that the defendant Robertson was to receive no compensation and that further he was only to appear before committees of Congress (P. R. pp. 26, 27). The Iowa case covered a contract between a county and an agent which provided that the latter should be authorized to make the proper applications to the general government for its swamp lands, or indemnity therefor, and that he was to receive one-half of what he thus procured for his services. To effect the object of his contract, certain Congressional action became necessary which he aided in procuring by legitimate means. The Court held that:

> "It was perfectly competent for the County to employ agents or attorneys for this purpose, and an agreement to pay them therefor is valid. Such agents may lawfully draft 'the petition to set forth the claim, attend to the taking of testimony, collecting facts, preparing arguments, and submitting them orally or in writing to a committee or other proper authority, and other services of like character. All these things are intended to reach only the reason of those sought to be influenced.' *Swayne, J., in Trist v. Child*, 21 Wall. 441."
>
> *Dennison v. Crawford Co.*, 48 Iowa 221, 215.

See also *Sun Printing & Publishing Ass'n. v. New York*, 157 N. Y., 257, 265, 46 N.E. 499 at 500, wherein it was further held that:

> "Common highways have always been regarded as under the special care, supervision, and control of municipal governments, upon which devolves the duty of keeping them in

> suitable repair, as well as the duty of providing sufficient ways to satisfy the requirements of the public."

A very logical exposition of the law, which we submit is applicable to this case, is to be found in the case of In re Taxpayers and Freeholders in the Village of Plattsburg, 50 N. Y. Supp., 356 at 365, 366. This case was later affirmed in 51 N.E. 512, and the language of the court there at page 515 is not inapplicable by way of analogy as showing, if it were conceded, for the sake of argument, that the defendant municipality had no specific statutory authority for the appropriation of funds for the purpose in question, that inasmuch as there is imposed upon it the duty to construct and maintain streets, then necessarily it must take such necessary steps as in the discretion of its Common Council are necessary for it to be able to perform that duty. However, to the decision found at pages 365 to 366 of 50 N. Y. Supp., we specifically refer. The Court therein said:

> "The board of trustees, by subdivision 20, Chap. 5, tit. 4, is authorized 'to employ an attorney and counsel when the business of the board of trustees or the village requires, either by the year or otherwise, and to pay him a reasonable compensation.' Under this provision of the statute, had the trustees power to employ counsel to appear before committees of the Legislature and the Governor in relation to any law or laws pertaining to the village? The general care of municipal affairs is entrusted to the officers of the municipality, and the initiating and providing for public im-

provements, or proposed public improvements, I think is within their province. While individual citizens are not barred from setting them on foot, but should be encouraged to do so, yet in the nature of things, they are left very largely to the municipal authorities; and, even when initiated by the enterprise or intelligence of the citizen, his first effort is to put the municipal officers in motion, and, if they find that their powers in that respect are limited or entirely withheld by the statute, it is perfectly proper for them to apply to the legislative power of the State for authority. This power or right, it seems to me, is incident to the general powers of government conferred upon them. The presentation of the merits of bills, or the necessity or propriety of legislation to committees of the Legislature and to the Governor, is legitimate employment for attorneys and counsel. It is a matter that requires skill and address.

"The presentation and preparation of bills to the Legislature by and on behalf of municipal authorities, to bring about needed or supposed needed improvements, or to obtain further powers for the making of public improvements, as well as opposing the passage of bills believed by municipal authorities to be inimical to the interests of the municipality, is of constant occurrence of late years; and some of the larger municipalities of the State keep some representative from the law department of such municipality in almost constant attendance upon the session of the Legislature, presenting and explaining to the Legislature bills proposed and legislation asked for by the municipality, and watching legislation prepared by others, and calling the attention of the Legislature to proposed improvident or unnecessary acts of legislation affecting their respective municipalities; and I think such

watchfulness over legislation prepared by others, and such attention to and furtherance of that which is deemed needful by the municipal authorities, has come to be regarded as a very proper, and, indeed, necessary, part of the functions of the law department of a city. There is no specific authority given authorizing them to send their law officers to attend upon the Legislature, or to pay their expenses for so doing; but it is regarded, and I think fairly so, as incident to the power and purposes of the municipality. It seems to me, therefore, that in this case, the village having the power to employ counsel 'when the business of the board of trustees of the village requires' it might legitimately employ them for the purpose heretofore specified, and their 'reasonable compensation' for such service would be a legal claim against the village."

In re Taxpayers & Freeholders of the Village of Plattsburgh, 50 N. Y. Supp. 356, 365-366.

See also:

Bachelder v. Epping, 28 N. H., 354.
Arthur v. Dayton, 4 Ky. L. Rep. 831.

The foregoing authorities clearly show the distinction between services which may be properly rendered in presenting matters to a Legislature and services which contemplate the use of personal solicitations, the exercise of personal influences and improper or corrupt methods. It will not be amiss to call attention to the distinguishing marks of some of the cases cited by appellant.

In the case of *Burke v. Wood*, 162 Fed. 533, at 451, the Court specifically said, "I think the evidence abundantly shows that the plaintiff solicited

members of the Council in the lobby or precincts of their place of assembly and elsewhere, with the purpose of influencing their votes in support of a measure to purchase the ..... works; that he personally solicited their votes in that behalf and exerted an influence over them in their legislative action in the premises." Very properly we submit the Court found that such services were lobbying services, but as we have many times pointed out there is nothing in this record to indicate that any such services were contemplated to be performed by the defendant Robertson.

In neither the case of *Manhattan Trust Co. v. Dayson*, 59 Fed. 327, nor in the case of *Washington Irr. Co. v. Krutz*, 119 Fed. 279, were there any services involved which make those cases analogous to the case at bar. We have no fault to find with the general principles of law quoted by the appellant from those cases, but call attention to the fact that the judgment in the last named case was in favor of the plaintiff Krutz.

The case of *James v. City of Seattle*, 62 Pac. 84, is entirely different from this case. The Court therein specifically stated that the expenditure could not be regarded as necessarily essential for municipal purposes. There is nothing in that case to indicate that, if the City of Seattle had appropriated money to send its city engineer to another city for the necessary purpose of making examinations of street work there such would not have been a lawful expenditure.

In the case of *State v. Superior Court*, 160 Pac. 755, the Port Commissioners with city funds were apparently conducting a political campaign. The direct appeal which they were making to voters would be very analogous to personal solicitations of members of a Legislature. They were trying to prevent the port's powers being limited. If the Juneau City Council were attempting to secure or prevent the enactment of legislation that would decrease or increase their members, the cases might have some possible analogy. Here, however, the municipality was seeking to raise the necessary funds for the construction of necessary permanent streets that it can not build except through a bond issue which bonds can not be issued until authorized by Congress.

In *Fields v. City of Shawnee*, 54 Pac. 318, the defendant was not trying to carry out any duty imposed upon it by the Legislature. In fact, the Court therein stated that it thought that the expenditure was expressly prohibited by reason of a Congressional act which prevented the city from using its credit to assist the railroad company.

In *Mead v. Acton*, 1 N. E .413, not only did the Court find that it was no part of the duty or function of the town to procure the passage of the statute, but the statute itself was held unconstitutional because it attempted to raise money by taxation for private purposes.

In *Henderson v. Covington*, 14 Bush, (Ky.) 312, the Court held that the construction of the

bridge across the Ohio River was not a part of the duty of the City Council, and furthermore, that the Council was not seeking to obtain legislation necessary to enable it to perform its corporate duties or to accomplish the purposes for which the corporation was created. In the instance case, the defendant municipality sought to obtain legislation to enable it to perform its corporate duties, imposed upon it by the Legislature, of locating, constructing and maintaining its streets.

In *Colusa County v. Welch*, 55 Pac. 243, it was held that the contract involved personal solicitations and private interviews with members of the Legislature and thus was against public policy, and also that the Board of Supervisors had no power or duty to act in the matter. The Court therein quoted the general rule as stated by Judge Cooley, i.e.:

> "The law also seeks to cast its protection around legislative sessions, and to shield them against corrupt and improper influences, by making void all contracts which have for their object to influence legislation in any other manner than by such open and public presentation of facts, arguments, and appeals to reason as are recognized as proper and legitimate with all public bodies. While counsel may be properly employed to present the reasons in favor of any public measure to the body authorized to pass upon it, or to any of its committees empowered to collect facts and hear arguments, and parties interested may lawfully contract to pay for this service, yet to secretly approach the members of such a

> body with a view to influence their action at a time and in a manner that do not allow the presentation of opposite views is improper and unfair to the opposing interest; and a contract to pay for this irregular and improper service would not be enforced by the law."
>
> *Cooley, Const. Lim.* (6th Ed.) p. 163.

We confidently assert that the facts of these cases are readily distinguishable from the facts in the case at bar, and not only were the contemplated services within the scope of the duty of the defendant municipality to locate, construct, and maintain its streets, but that they were admittedly strictly legitimate services and not lobbying services.

Herrick v. Brazee, 190 Pac. 141.

Stanton v. Embrey, 93 U. S. 549, 23 L. ed. 983.

Nutt v. Knut, 200 U. S. 1, 50 L. ed. 348 at 353.

In *Herrick v. Brazee, supra*, the Oregon Supreme Court emphatically approved appellees' contention, viz.:

> "In *Stanton v. Embrey*, 93 U. S. 549, where an attorney's fee for the prosecution of a claim against the United States before the officials of the Treasury Department, the services were rendered upon a contract for a contingent remuneration. The instruction of the trial Court to the jury which was approved upon appeal to the Supreme Court of the United States was in part as follows:
>
> > 'Where an attorney in the exercise of his ordinary labor and calling, and with the

> instrumentalities of his professional learning and industry, undertakes to work out a desired result for his client, not through personal influence, but through the instrumentalities of the law—by persuasion, as distinguished from influence—such an undertaking is not an unlawful one, or contrary to public policy.'

"A judgment for over $9,000 was affirmed.

"In 2 R. C. L. p. 1041, 112, we read:

> 'In contracts between attorneys and clients the usual test would seem to apply that if a contract can by its terms be performed lawfully, it will be treated as legal, even if performed in an illegal manner; while, on the other hand, a contract entered into with intent to violate the law is illegal, even if the parties may, in performing it, depart from the contract and keep within the law.'
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> * * * * *
>
> 'The courts do not condemn the attempts to secure legislation for legitimate purposes and in a legitimate manner. Citing *Cole v. Brown-Hurley Hardware Co.*, 139 Iowa, 487, (117 N.W. 746, 18 L.R.A. (N.S.) 1161), 16 Ann. Cas. 846 and note, 18 L.R.A. (N.S.) 1661 and note; *Long v. Battle Creek*, 29 Mich. 323, 33, Am. Rep. 384; *Stroemer v. Van Orsdel*, 74 Neb. 113 (103 N.W. 1053, 107 N.W. 125), 121 A.S.R. 713 and note, 4 L.R.A. (N.S.) 212 and note; *Houlton v. Nichol* 95 Wis. 393 (67 N.W. 715), 57 A.S.R. 928, 33 L.R.A. (166). . . . . But as the law does not presume that a person intends to violate its provisions the general principle controlling the construction of a contract to influence legislation when the contract

> itself does not in terms stipulate for improper means seems to be that it will be upheld, unless the use of such means appears by necessary implication. The test is, does the contract, by its terms or by necessary implication, require the performance of acts which are of a corrupt character or which have a corrupting tendency?' 6 R.C.L. pp. 732, 733."

THE EXPENDITURE BY THE CITY COUNCIL DID NOT INVOLVE THE ASSESSMENT OF A TAX FOR AN ILLEGAL PURPOSE, AND WILL NOT CAUSE PLAINTIFF TO SUFFER AN INJURY DIFFERING IN KIND FROM THAT SUFFERED BY THE GENERAL PUBLIC, AND THE PLAINTIFF CANNOT MAINTAIN THIS SUIT.

As we have urged, it is our understanding that the facts before the Court are to be taken only from the further answer and new matter contained in defendants' answer and that no extrinsic facts can be garnered from the plaintiff's amended complaint or from other portions of the defendants' answer. If we are mistaken in this, then we respectfully urge that in any event the admitted facts remain as heretofore herein set forth and, furthermore, that those facts clearly show that the plaintiff can not maintain this action. He alleges that he is a taxpayer and that he has paid large sums of taxes on his property and that a large sum of the monies in the municipality's treasury represents and is the very monies so paid by him into

the treasury. (P. R. p. 2.) The defendants deny that any part of these monies is the very money so paid by plaintiff, but admit the plaintiff is a taxpayer (P. R. pp. 20, 21.) These monies are admittedly derived from the several sources enumerated in defendants' further answer and have not been appropriated or set aside for any specific purpose whatsoever, and the appropriation and expenditure of them in the payment of defendant Robertson's expenses would not necessitate the levying of a special tax or increase the taxes levied for the current year. (P. R. p. 28.) It thus clearly appears that the plaintiff will not suffer any private injury, or any injury differing in kind from that which will be suffered by the public generally; furthermore, that neither the plaintiff nor the public will suffer any injury whatsoever because the appropriated expenditure will neither necessitate a special tax nor increase the tax lavy; also, that the monies are not derived solely from real and personal taxation but are derived from various sources including revenues and profits made by the city's operation of its city dock and facilities. While under certain circumstances a taxpayer or private citizen can maintain a suit to enjoin the threatened expenditure of public monies by a municipality in an unlawful or prohibited manner, yet we submit thet a private citizen can not maintain such suit unless he shows that he will suffer an injury differing in kind and not merely in degree from that suffered by the public generally.

19 R.C.L., p. 1164, 1165.

Circuit Justice Bradley, in a case coming before him, upon this point said:

> "The bill assumes that a taxpayer, who is liable to be assessed for the public taxes that will be necessary to pay the State debt and interest thereon, can maintain a private suit to prevent the State officers from executing and issuing bonds which the Legislature has unconstitutionally authorized and required to be issued. I do not think that such a suit can be maintained. It is a general rule that a man cannot maintain a private suit for an injury which he sustains in common with every other citizen. To allow such actions would promote endless litigation."

Morgan v. Graham, 17 Fed. Cs. No. 9,801.

The Oregon cases clearly enunciate this doctrine:

> "His (taxpayer's) right to invoke the aid of a court of equity to restrain by injunction such unlawful acts depends upon his personal injury, and the test of such injury is measured by the fact that his property would be subjected to an additional burden of taxation. If his property will not be subjected to an additional burden of taxation, and he will not sustain any other personal damages, his injury is not contradistinguished from that of all other taxpayers of the municipality, and he can not invoke the aid of equity to prevent an unlawful corporate act, however much he may, in common with others, be injured."

Sherman v. Bellows, 24 Ore. 554, 34 P. 549.

See also:

McKinney v. Watson, et al. 145 Pac. (Ore.) 266, 267.

Andrews v. South Haven, 153 N.W. (Mich) 827, L.R.A. 1916-A, 908.

And at the expense of repetition, we again reiterate that the record also conclusively shows that the public generally has suffered no injury by the defendants' acts.

CONCLUSION.

The admitted facts and the law thus clearly establishing that the defendant municipality was authorized to make the appropriation and expenditure in the manner alleged by defendants' further answer and new matter for the purpose of sending to Washington, D. C., the defendant Robertson to explain to the committees of Congress the necessity of the municipality's being permitted to issue bonds for the purpose of raising the funds necessary to enable that municipality to build necessary permanent streets and that the defendant Behrends as treasurer was authorized to pay the money so appropriated to said defendant Robertson and that the latter was authorized to use the same, or so much thereof as was required therefor, to pay his expenses to and from Washington, D. C., we earnestly urge that the learned trial Court correctly and logically reached the conclusion embodied in his opinion (P. R. pp. 41-56), and that, the appellant having refused to plead over and having

stood upon his demurrer, judgment was properly entered herein for the appellees, and that said judgment ought of right to be sustained, not only for the reasons given by the trial Court but also because the record clearly discloses that the appellant has entirely failed to show that he will suffer any injury differing in kind from that which the general public will suffer or that the general public itself will suffer any injury whatsoever by defendants' acts and appellant cannot maintain this action.

Respectfully submitted,

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